In the Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-708

PAUL J. TRAFFICANTE, DOROTHY M. CARR, COMMITTEE OF PARKMERCED RESIDENTS COMMITTED TO OPEN OCCUPANCY, an unincorporated association; THE REVEREND ARTHUR H. NEWBERG, JAMES EMBREE, ALBERT JAMES HEICK, and JAQUELINE TCHAKALIAN,
Petitioners,

vs.

METROPOLITAN LIFE INSURANCE COMPANY, a New York Corporation, and PARKMERCED CORPORATION, a California Corporation,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Brief of Respondent Metropolitan Life Insurance Company

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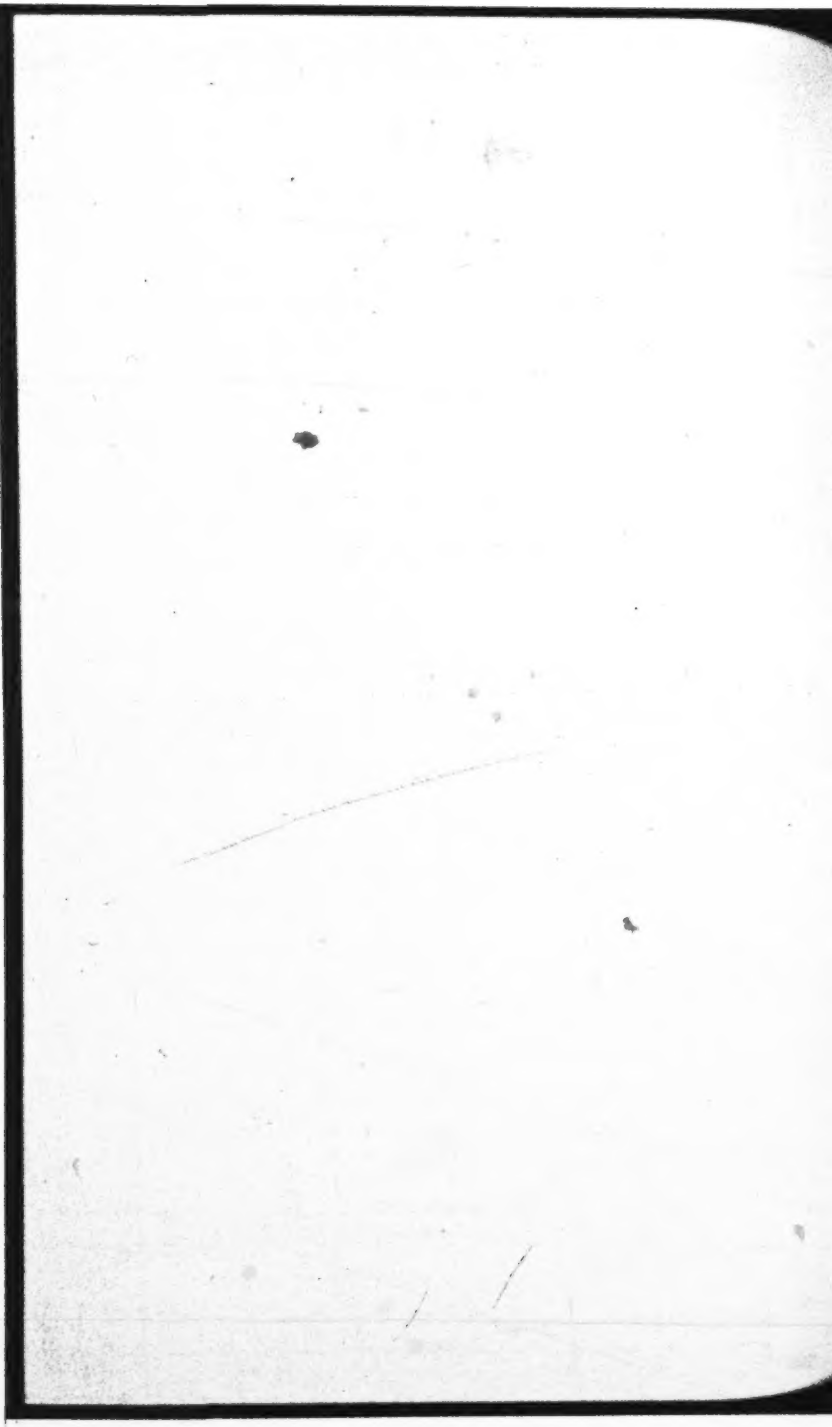

SUBJECT INDEX

TABLE OF AUTHORITIES CITED

Cases

STATUTES

OTHERS

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OPINIONS BELOW

The opinion of the District Court for the Northern District of California (Appendix A hereto) dismissing the Complaint and Complaint in Intervention is reported at 322 F.Supp. 352 (N.D. Cal. 1971). The opinion of the Court of Appeals for the Ninth Circuit (Appendix A of Petitioner's Brief) affirming the Judgment of Dismissal is reported at 446 F.2d 1158.

JURISDICTION

The Judgment of the Court of Appeals for the Ninth Circuit was entered on August 6, 1971. On September 13, 1971, the Court of Appeals denied a timely petition for rehearing *en banc*. A copy of the Order is attached hereto as Appendix B. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

QUESTIONS PRESENTED

1. Do tenants of an apartment complex against whom no act of discrimination has been practiced and none of whom have been deprived of the right to rent or lease real property have standing under the Fair Housing Act (Title VIII of the Civil Rights Act of 1968; P.L. 90-284, 42 U.S.C. § 3601 et seq.) or 42 U.S.C. § 1982 to maintain an action against their former or present landlord for alleged acts of discrimination against others?

2. Does the Federal court lack subject matter jurisdiction of Petitioner's claims under the Fair Housing Act by reason of 42 U.S.C. § 3610(d)?

3. Is the case moot as to respondent Metropolitan Life Insurance Company ("Metropolitan") by reason of its sale of Parkmerced?

STATUTES INVOLVED

The statutes involved are:

1. Title VIII (Fair Housing) of the Civil Rights Act of 1968 (P.L. 90-284; 42 U.S.C. § 3601 et seq.)
2. 42 U.S.C. § 1982.
3. California Health and Safety Code §§ 35700, 35720, 35731, 35732, 35734, and 35748.
4. California Civil Code §§ 51 and 52.

These statutes are set forth in Appendix C hereto.

STATEMENT

This action arises under the Fair Housing Act (Title VIII of the Civil Rights Act of 1968) and 42 U.S.C. § 1982. Parkmerced is a 3500 unit garden and tower apartment complex located on approximately 150 acres in the southwest portion of San Francisco. It is immediately contiguous to or near hundreds of privately owned single family residences, San Francisco State College, other unrelated

apartment complexes and several shopping areas. Commenced in the early 1940's and completed in the early 1950's, it was entirely constructed with private capital by Metropolitan which owned and operated it until December 21, 1970.[1] On that date Metropolitan sold the buildings and leased the land for a period of 30 years, with three 15-year renewal options, to Parkmerced Corporation in a bona fide, arm's-length business transaction. Metropolitan has no ownership interest whatever in Parkmerced Corporation and from and after the date of sale was divested of all right to manage, control or otherwise operate the project including the rental of apartment units. It has had no employees engaged in Parkmerced's operations since the sale (R. Ex. K).

At the time of the commencement of this action, each petitioner was a resident and tenant at Parkmerced.[2] Since the Order attacked by petitioners is an Order dismissing the Complaint and Complaint in Intervention, the facts under review are the allegations of the complaints.[3] The Complaint contains three causes of action, the first and second being based upon §§ 3610 and 3612, respectively, of the Fair Housing Act, and the third upon 42 U.S.C. § 1982.

---

1. Parkmerced was one of seven projects built and financed by Metropolitan for the purpose of providing middle income housing in park-like settings in urban areas. The others were Parkchester in the Bronx; Riverton in Harlem; Stuyvesant Town and Peter Cooper Village in Mid-Manhattan; Park Fairfax in Alexandria; and Parklabrea in Los Angeles.

2. Except the Committee of Parkmerced Residents Committed to Open Occupancy. The Committee is alleged to be an unincorporated association, all of the members of which are residents of Parkmerced. The number or identity of members of the Committee is not disclosed by the record. Since the commencement of the action, all of the individual plaintiffs in intervention have moved from Parkmerced, and petitioner Carr has publicly announced her intention to do so.

3. The Affidavit of Alvin F. Poussaint (R. Ex. I) is not part of the complaints. It was filed in the District Court by petitioners in opposition to Respondents' Motions to Dismiss.

Each cause of action alleges that petitioner Trafficante is a Caucasian and petitioner Carr a Negro; that both are tenants of and reside at Parkmerced; *upon information and belief only,* that Metropolitan has "for many years" prior to the filing of the complaint discriminated against minority groups in rental practices; and that prior to the commencement of the action the petitioners filed complaints with the Secretary of Housing and Urban Development ("H.U.D."), pursuant to the provisions of 42 U.S.C. § 3610, which were not resolved. The Complaint in Intervention is virtually identical to the causes of action of the Complaint based upon 42 U.S.C. § 3612 and 42 U.S.C. § 1982. All petitioners assert that by reason of the alleged discrimination they have been deprived of certain social, business and professional benefits.

Neither the Complaint nor the Complaint in Intervention contain any allegation that the petitioners, or any of them, have themselves been deprived of housing or any right guaranteed them by the Fair Housing Act or 42 U.S.C. § 1982. The complaints are also devoid of any allegation that respondents have denied or interferred with the free access to Parkmerced of any person seeking business or social contact with plaintiffs; or interfered with plaintiffs' business or social activities with any person; or curtailed any service to plaintiffs because of their activities, guests, or business invitees; or otherwise interferred with plaintiffs' right of free inter-racial association.

Upon motion of Respondents[4] the District Court, on February 10, 1971, dismissed the action upon the ground that petitioners were not persons aggrieved under the relevant statutes and were without standing to maintain the action.

---

4. Immediately after the sale of Parkmerced the purchaser, Parkmerced Corporation, was joined as a defendant in the action.

On February 25, 1971, petitioners' attorneys filed a Complaint entitled Charles Burbridge (et al.) vs. Parkmerced Corporation and Metropolitan Life Insurance Company (U.S.D.C. N.D. California No. 71 378), a copy of which is Appendix D hereto. That case is now pending. The defendants have answered, and discovery procedures are being pursued. The plaintiffs, all Negroes, allege that they are the direct victims of discriminatory housing practices which resulted in their exclusion from Parkmerced and accordingly their standing to maintain the action has not been challenged. Reference to *Burbridge* will be made further in this brief.[5]

The Court of Appeals for the Ninth Circuit unanimously affirmed the District Court noting, as had the District Court, that the plaintiffs had not alleged, "nor can they that they themselves have been denied any of the rights granted by Title VIII or by 42 U.S.C. § 1982 to purchase or rent real property." Both Courts held squarely that the "interests" and "injuries" alleged in the Complaint were not the interests and injuries contemplated by the Fair Housing Act or § 1982 and concluded that petitioners were without standing to maintain the action. Neither Court reached the jurisdictional or mootness question.

SUMMARY OF ARGUMENT

Respondents contend that the purpose of the Fair Housing Act was to make housing available to all persons without discrimination based on race, color, religion or national origin. To effect that policy and purpose, Congress specifically defined acts which it declared to be unlawful and provided a comprehensive scheme of remedies to any person who had been denied housing in violation of the Act.

5. infra p. 22

The Act does not contemplate this type of action or provide redress for the "injuries" asserted. Petitioners are not the intended beneficiaries of the Act.

Similarly, petitioners are not within the class of persons afforded protection by 42 U.S.C. § 1982 since they have not been denied the right to lease property.

In addition to petitioners' lack of standing, the Federal Court lacked subject matter jurisdiction of the claims predicated on the Fair Housing Act by virtue of 42 U.S.C. § 3610(d) which prohibits federal jurisdiction if a State or local fair housing law provides substantially equivalent rights and remedies as the Fair Housing Act and contains a judicial remedy. California's Rumford Act[6] and Unruh Civil Rights Act[7] provide such rights and remedies.

Finally, the case is moot as to respondent Metropolitan by reason of its sale of Parkmerced. Metropolitan no longer controls any aspect of the operation at Parkmerced and it would be idle for a court to enter an injunction against it. The damage claims asserted do not save the case from the doctrine of mootness because they are not cognizable under the statutes involved.

ARGUMENT

I

TENANTS WHO HAVE NOT BEEN THE DIRECT VICTIMS OF ANY ACT PROSCRIBED BY THE RELEVANT STATUTES LACK STANDING TO CHALLENGE ALLEGED ACTS OF DISCRIMINATION BY THEIR LANDLORD AGAINST OTHERS

A. The Concept of Standing in this Case.

The cases involving the issue of standing are legion, but the final formula for standing in this case may be extracted from *Association of Data Processing Service Organizations,*

6. Cal. Health & Safety Code §35700, et seq.
7. Cal. Civ. Code §51, et seq.

Inc. v. Camp, 397 U.S. 150 (1970); *Barlow v. Collins*, 397 U.S. 159 (1970); *Sierra Club v. Morton*, 92 S.Ct. 1361 (1972); and *Flast v. Cohen*, 392 U.S. 83 (1968). In *Data Processing* and *Barlow* this Court granted standing to obtain judicial review of governmental agency action where the petitioners themselves had suffered direct economic injury and were clearly persons aggrieved within the meaning of the Administrative Procedure Act. In *Data Processing* it was held (pp. 151, 153):

> "Generalizations about standing to sue are largely worthless as such. One generalization is, however, necessary and that is that the question of standing in the federal courts is to be considered in the framework of Article III which restricts judicial power to 'cases' and 'controversies.'
>
> • • • • •
>
> "• • • [The question of standing] concerns, apart from the 'case' or 'controversy' test, the question whether the interest sought to be protected by the complainant is arguably within the zone of interests to be protected or regulated by the statute or constitutional guarantee in question. Thus the Administrative Procedure Act grants standing to a person 'aggrieved by agency action within the meaning of a relevant statute.'"

and (p. 154):

> "Apart from Article III jurisdictional questions, problems of standing, as resolved by this Court, have involved a 'rule of self-restraint for its own governance.' Barrows v. Jackson, 346 US 249. Congress can, of course, resolve the question one way or another, save as the requirements of Article III dictate otherwise. Muskrat v. United States, 219 US 346."

Subsequently, in *Sierra Club* this Court affirmed that the "injury in fact" element necessary to satisfy Article III requirements for standing could be of a noneconomic na-

ture provided the party seeking review had himself suffered an injury to a "cognizable interest" (p. 1366) and had a "*direct* stake in the outcome" (p. 1369; emphasis added). The Court however denied standing to purely "special interest" organizations which had not alleged cognizable injury to itself, and observed (p. 1368):

> "The requirement that a party seeking review must allege facts showing that he is himself adversely affected does not * * * prevent any public interests from being protected through the judicial process. It does serve as at least a rough attempt to put the decision as to whether review will be sought in the hands of those who have a *direct* stake in the outcome. That goal would be undermined were we to construe the relevant statute to authorize judicial review at the behest of organizations or individuals who seek to do no more than vindicate their own value preferences through the judicial process." (Emphasis added)

In *Flast* the Court had previously summarized (pp. 99, 100):

> "In other words, when standing is placed in issue in a case, the question is whether the person whose standing is challenged is a proper party to resquest an adjudication of a particular issue and not whether the issue itself is justiciable."

Under those holdings it is not sufficient that petitioners advance merely any injury or interest but they must assert an injury which is "cognizable" (*Sierra Club* at 1366) and "arguably within the zone of interests to be protected or regulated by the statute" (*Data Processing* at 153). Petitioners satisfy neither requirement but respondent believes that in the context of this case the "injury in fact" element necessary to satisfy Article III 'case' or 'controversy' requirements and the "zone of interests" test are so inseparably interwoven that an attempt to dissect and treat them separately or independently would be an exercise in

futility. Thus, if petitioners have not alleged an injury cognizable under the relevant statutes they are not within the zone of interests sought to be protected by the statutes. Conversely, if they are not within the zone of interests to be protected by the statutes they have not suffered a cognizable injury.[8]

B. The Injuries Alleged and the Interests Asserted Are Not Within the Zone of Interests Protected by the Fair Housing Act.

The petitioners' "injuries" are alleged to be:

> "(a) plaintiffs are deprived of the social benefit of living within a community which is not artificially imbalanced in a manner which excludes minority group members;
>
> "(b) plaintiffs suffer the loss of business and professional advantages which accrue from contact and association with minority group members;
>
> "(c) plaintiffs are stigmatized within both the white and minority group communities as residents of a segregated 'white ghetto', causing such residents both embarassment and economic damage in social, business and professional activities." (R. Ex. A at 5 and Ex. B at 5; Pet.App. C at 5.)

An examination of the Fair Housing Act is necessary to determine whether the injuries and interests asserted are within the purview of the statutes involved and whether, consequently, the petitioners have or lack standing. The Act itself defines the rights that it creates and protects, the injuries it prohibits, and persons aggrieved by its violation. In relevant parts it provides:

> "§ 3610. (a) Any person who claims to have been injured by a discriminatory housing practice or who believes that he will be irrevocably injured by a dis-

8. Compare this Court's statement in *Flast v. Cohen* (p. 95) that: "Thus, no justiciable controversy is presented when * * * there is no standing to maintain the action."

criminatory housing practice that is about to occur (hereafter 'person aggrieved') may file a complaint with the Secretary.

"(d) * * * the person aggrieved may, within thirty days thereafter, commence a civil action in any appropriate United States district court, against the respondent named in the complaint, *to enforce the rights granted or protected by this subchapter*, insofar as such rights relate to the subject of the complaint: * * *"

"§ 3602. As used in this title—

* * * * *

"(f) 'Discriminatory housing practice' means an act that is unlawful under section 3604, * * *."

"§ 3604. As made applicable by section 3603 and except as exempted by sections 3603(b) and 3607, it shall be unlawful—

"(a) To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, or national origin.

"(b) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, or national origin.

* * * * *

"(d) To represent to any person because of race, color, religion, or national origin that any dwelling is not available for inspection, sale, or rental when such dwelling is in fact so available."

"§ 3612. (a) *The rights granted by sections * * * 3604 * * * may be enforced by civil actions* in appropriate United States district courts without regard to the amount in controversy and in appropriate State or local courts of general jurisdiction." (Emphasis added)

Read in context it is clear that petitioners are not and were not intended to be, persons aggrieved within the meaning

of § 3610(a). As tenants and residents of Parkmerced, none of the acts proscribed by § 3604(a), (b) and (d) have been practiced against them, nor have they been deprived of any of the rights specifically defined by § 3604 which could be the subject of enforcement action under § 3610(d) or § 3612.[9] The rights granted by § 3604 which are enforceable under §§ 3610 and 3612 are not the rights asserted by petitioners but the right to obtain housing free of discrimination. This personal right is directly enforceable only by the person to whom given.[10] Many parts of the Fair Housing Act compel this conclusion. For example, a person claiming to have been injured by a discriminatory housing practice may file an administrative complaint with the Secretary (§ 3610(a)); the complaint *must* be filed within 180 days after the specific acts complained of occur (§ 3610(b)); the complaint filed with the Secretary must state the specific facts upon which it is based (§ 3610(b));[11] an action under § 3610(d) must be filed within thirty days after the Secretary is unable to resolve the administrative complaint (§ 3610(d)); an action under § 3612 must be filed within 180 days of the occurrence of the alleged discriminatory housing practice or be barred (§ 3612(a)); and federal administrative assistance is available to persons aggrieved (§§ 3608, 3611). Many parts of the Act, including the specific and exact time limitations for seeking redress, become

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9. While the language of § 3612 is arguably narrower than that of § 3610, respondent does not contend that different tests of standing are applicable under the two sections. Rather, the precise wording of § 3612 reinforces the conclusion that in providing enforcement machinery Congress intended to provide remedies only for the direct victims of discriminatory housing practices.

10. In a broader sense the Fair Housing Act is enforceable by the Attorney General under § 3613.

11. Compare the complaint, the charging allegations of which are based upon information and belief only (R. Ex. A at 2, 3; Pet. Br. App. C at 2, 3); and Ex. A and B to Complaint which state no facts whatever.

meaningless if third parties who have not been deprived of any of the rights created by the Act are allowed to maintain an action such as this. § 3610 does not provide for an award of damages (*Brown v. Ballas*, 331 F.Supp. 1033 (D.C. Tex. 1971) but its injunctive and affirmative action provisions are obviously designed only to obtain housing for persons who have been discriminated against. Similarly, the provisions of § 3612 authorizing an award of damages, costs and attorney's fees clearly contemplate redress of an injury inflicted upon a person who has been wrongfully denied housing.

The congressional history of the Fair Housing Act is replete with indications that Congress intended actions under § 3610 and § 3612 only by the direct victims of a discriminatory act. In a discussion of costs and attorney's fees in the Senate, Senator Hart stated pointedly:

> "Mr. President, I think it important to note that Section 212(b) and (c) as those provisions now stand do reveal a clear congressional intent to permit, and even encourage, litigation by those who cannot afford to redress *specific wrongs aimed at them because of the color of their skin.* Of course a court must judge what fees are appropriate, as well as what damages may apply, but this Section should not be read as permitting courts to deny costs solely at its discretion. We cannot prevent unwitting enforcement of this provision to shut the courthouse doors to those *whose rights are violated* simply because they lack the funds to protect *those rights.*"[12] (Emphasis added.)

Similarly, the following colloquy occurred in a discussion of § 3612:

Senator Mondale:

> "As I understand the intent of the amendment, as modified, offered by the Senator from Colorado [Mr.

12. 114 Cong. Rec. at 5514

Allott] it is this: when a person really wants to rent a particular leasehold or when he wants to buy a particular piece of property, he is clearly within the protection of this measure. But when the offer is in effect a phony one, when he has no intention, when it is not a good safe offer, because he is on a lark or whatever, when it is a contrived sort of situation with which he would never go through, he would not be protected."

Senator Allott:

"I think that bona fide means a man has to be ready, willing and able to perform. Without these three elements it would not be a bona fide offer capable of enforcement if accepted.[13]

Speaking of the Act generally, Representative Corman observed:

"It would assure that anyone who answered an advertisement for housing not be turned away on the basis of his race."[14]

On April 10, 1968, the date the Act was passed in the House of Representatives, Representative Celler commented:

"A person aggrieved files his complaint within 180 days after the alleged acts of discrimination. The Secretary of Housing and Urban Development would have 30 days after filing of the complaint to investigate the matter and give notice to the person aggrieved whether he intended to resolve it. • • • If conciliation failed, or if the Secretary declined to resolve the charge or otherwise did not act within the 30-day period, the aggrieved person would have 30 days in which to file a civil action in either a State or Federal court.

• • • • •

"The bill further provides that any sale, encumbrance, or rental consummated prior to a court order issued

13. 114 Cong. Rec. at 5515.

14. 114 Cong. Rec. at 9600.

under this act and involving a bona fide purchaser, encumbrancer, or tenant, shall not be affected."[15]

These statements are only a few from many expressed in varying contexts. The theme central to all discussions, however, was the dignity of man, his right to housing and equal treatment regardless of the color of his skin, and the guarantee of those rights to *him*. Nowhere did either the Senate or the House express any concern whatever for the enhancement of the business and social activities of any third persons, including tenants. The discussions fail to disclose any intent on the part of Congress to grant standing to sue to any but the direct victims of discriminatory housing practices and the Attorney General.

Similarly, there is no indication whatever in either the Act itself or its congressional history that Congress intended to require private landlords to enter into meaningless and inconclusive injunctive or damage litigation with any tenant who happened to disagree with the landlord's business practices, procedures or social views, nor to subject private landlords to the possible harassment of a multitude of lawsuits which would be binding upon no one. If upon a trial petitioners, who sue in their right alone, were denied the relief they seek, the judgment would not and could not be binding upon the next group of plaintiffs asserting a real or imagined grievance. On the other hand, if any measure of relief was granted by a court the extent of the judgment would not and could not be binding or conclusive upon persons not parties to the action. Hence, any third person[16] being dissatisfied with the result could commence another action to attempt to implement his views or to "vindicate [his] own value preferences" (*Sierra Club*

15. 114 Cong. Rec. at 9560.

16. Parkmerced alone houses over 8000 persons (R. Ex. A at 2).

at 1369). Further, the specter of a person obtaining housing through the administrative or judicial process followed immediately by a claim for damages against his new landlord for injuries allegedly being suffered as a result of living in a segregated community would be an exercise in circuity devoid of logic and contrary to the ennobling purpose of the statutes. Such profound disorder could not only not have been contemplated by Congress but is totally unnecessary to achieve the purpose of the Act.[17] The injuries and interests asserted are simply not those contemplated by the Fair Housing Act. Petitioners are not therefore persons aggrieved within the meaning of the Act and their noncognizable injuries cannot be made the subject of an action for damages.

C. Petitioners Lack Standing Under 42 U.S.C. § 1982.

Petitioners' lack of standing under § 1982 is patent. In concise terms that section provides:

> "All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property."

In interpreting the statute this Court, in *Jones v. Mayer Co.*, 392 U.S. 409 (1968), stated (p. 420):

> "We begin with the language of the statute itself. In plain and unambiguous terms, § 1982 grants to all citizens, without regard to race or color, 'the same right' to purchase and lease property 'as is enjoyed by white citizens.'"

Petitioners do not and cannot fall within the purview of that statute. Obviously none has been denied the right to lease real property. Consequently, they have suffered no

17. Infra at 28.

"injury in fact" at all, nor can their claims fall "arguably within the zone of interests to be protected * * * by the statute." The entire rationale of *Jones v. Mayer Co.* is inimical to the status petitioners represent and does not remotely purport to grant them standing. In fact, all of the implications of *Jones* are directly to the contrary. Quoting its earlier decision in *Hurd v. Hodge*, 334 U.S. 24 (1947), this Court stated (p. 419):

> "Hurd v. Hodge, supra, squarely held, therefore, that a Negro citizen who is denied the opportunity to purchase the home he wants '[s]olely because of [his] race and color,' 334 U.S., at 34, has suffered *the kind of injury that § 1982 was designed to prevent.*" (Emphasis added.)

The entire thrust of *Jones* was the protection of the rights of Negroes to purchase or lease property. Indeed, the constitutionality of § 1982 was predicated upon its attempt, as authorized by the Thirteenth Amendment, to abolish a "badge of slavery". The kind of injury that § 1982 was designed to prevent is simply not present in this case.[18]

D. Petitioner Committee of Parkmerced Residents Committed to Open Occupancy Has Not Alleged Any Injury to Itself.

What has been said heretofore applies with equal force to all petitioners. There is, however, an additional fatal defect in the complaint in intervention filed by the Committee of Parkmerced Residents Committed to Open Occupancy ("Committee").

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18. The contention of the United States that to the extent petitioner Carr claims to be a victim of tokenism her complaint is within the terms of § 1982 (Brief of United States, n. 36 at 20 is neither suggested nor supported by *Jones v. Mayer Co.* or *Griffin v. Breckenridge*, 403 U.S. 88 in both of which the plaintiff was the direct victim of a specific offense. Further, the claim of "tokenism" attributed to petitioner Carr does not appear in her complaint.

It is alleged that the Committee is "an unincorporated association of Caucasian and Negro individuals who are residents of Parkmerced committed to correction of the racial imbalance presently existing at Parkmerced" (R. Ex. B at 2). But the only injuries allegedly suffered by the Committee are the same loss of social, business and professional benefits alleged by the individual plaintiffs.[19] In *Sierra Club* this Court held (p. 1366):

> "But the 'injury in fact' test requires more than an injury to a cognizable interest. It requires that the party seeking review be himself among the injured • • •"

and (p. 1368):

> "But a mere 'interest in a problem,' no matter how longstanding the interest and no matter how qualified the organization is in evaluating the problem, is not sufficient by itself to render the organization 'adversely affected' or 'aggrieved' within the meaning of the [relevant statute]. The Sierra Club is a large and long-established organization, with an historic commitment to the cause of protecting our Nation's natural heritage from man's depredations. But if a 'special interest' in this subject were enough to entitle the Sierra Club to commence this litigation, there would appear to be no objective basis upon which to disallow a suit by any other bona fide 'special interest' organization, however small or short-lived. And if any group with a bona fide 'special interest' could initiate such litigation, it is difficult to perceive why any individual citizen with the same bona fide special interest would not also be entitled to do so."

The holding in *Sierra Club* was premised upon lack of an allegation of injury to the Sierra Club itself or an individualized injury to any of its members. The Committee in this

19. Supra at 13.

case thus appears to be a "special interest" group formed for the sole purpose of correcting an alleged racial imbalance at Parkmerced. As such, it has not and cannot have suffered the only "injuries" which are alleged. Further, as in *Sierra*, there is no allegation whatever that the individual members of the Committee have suffered any "injury in fact."[20]

E. The Cases Relied Upon by Petitioners Do Not Support Their Claims to Standing.

Since Congress has designated the persons entitled to file actions under the Fair Housing Act, it is unnecessary to consider a host of authorities in which standing or lack of standing was determined by nonstatutory standards or the phrase "person aggrieved" was not defined. Similarly, the clear lack of any cognizable injury to or interest in petitioners makes it unnecessary to consider what injury or interest would qualify to grant standing under § 1982. But it should not go unsaid that the cases principally relied upon by petitioners do not grant or purport to grant standing to them. In each such case the plaintiff was clearly the person directly aggrieved and had a cognizable interest in the subject matter of the action.

Thus, in *Sullivan v. Little Hunting Park*, 396 U.S. 229 (1969), *Barrows v. Jackson*, 346 U.S. 249 (1953), *Carter v. Greene County*, 396 U.S. 320 (1970), *Bailey v. Patterson*, 369 U.S. 31 (1962), *Adickes v. Kress & Co.*, 398 U.S. 144 (1970), *Marable v. Alabama Mental Health Board*, 297 F.Supp 291 (N.D. Ala. 1969) and *Walker v. Pointer*, 304 F.Supp. 56 (W.D. Tex. 1969), the plaintiff was the person against whom an act of discrimination had been directly

20. The Committee's status is unlike that of the petitioner in *N.A.A.C.P. v. Button*, 371 U.S. 415, wherein the Court granted standing to a corporation which had alleged direct injuries to itself, its purpose and its functions, as well as injury to its members.

practiced. In *Sullivan* the plaintiff himself had been expelled from a corporation because he had leased his residence to a Negro and accordingly was granted standing to maintain an action for damages to himself. In *Barrows* the defendant was accorded the right to assert the doctrine of *Shelley v. Kremer*, 334 U.S. 1 (1947) *on his own behalf* as a defense to an action for damages against *him*. (The Court there reiterated the rule that one may not claim standing to vindicate the rights of another but held that the contemplated action of a State Court could result in a denial to the defendant of his *own* constitutional rights.) In *Carter* the plaintiffs had been unlawfully excluded from jury service. The petitioners themselves in *Bailey* had been denied nonsegregated treatment, while in *Adickes* the plaintiff had been refused service in the defendant's restaurant facilities and had been arrested upon her departure from the defendant's store. The plaintiffs in *Marable* were the direct victims of the practices complained of and in *Walker* were the persons actually evicted from rented property in violation of their own rights.

Similarly, in *Newman v. Piggie Park Enterprises, Inc.*, 390 U.S. 400 (1968), *Miller v. Amusement Enterprises, Inc.*, 426 F.2d 534 (C.A. 5 1970), *Hackett v. McGuire Bros., Inc.*, 445 F.2d 442 (C.A. 3 1971) and *Carr v. Conoco Plastics, Inc.*, 423 F.2d 57 (CA 5, 1970) the plaintiff was the person against whom an act of discrimination had been directly practiced and the action was authorized by a specific statute.

Finally, this case does not present any challenge to governmental administrative agency action as in *Scenic Hudson Preservation Conference v. FPC*, 354 F.2d 608 (C.A. 2 1965), *Shannon v. HUD*, 436 F.2d 809 (C.A. 3 1970), *Kenedy Park Homes Association, Inc. v. City of Lackawanna*, 318 F.Supp. 669 (1970) aff'd 436 F.2d 108 (C.A. 2 1970) *Office of Communication of United Church of Christ*

v. FCC, 359 F.2d 994 (C.A. D.C. 1966), and *Lee v. Nyquist*, 318 F.Supp. 710 (W.D. N.Y. 1970), aff'd 402 U.S. 935 (1971). In each of those cases the plaintiff, who was the person directly aggrieved, was granted standing to challenge administrative action of a government agency in order to assure its regularity and compliance with the Constitution or pertinent statutes or regulations.

None of the cases cited by petitioners, including Civil Rights cases, grant standing to sue to any except the direct victims of the discriminatory practice complained of and they are not therefore germane to the issue of standing in this case.

F. Administrative Interpretation of Title VIII.

Respondent acknowledges that an administrative interpretation of an Act by an agency charged with its enforcement is entitled to consideration. The consideration, however, is subject to the limitation imposed by this Court in *Skidmore v. Swift*, 323 U.S. 134 (1944), that (p. 140):

> "The weight of [an administrative determination] in a particular case will depend upon the thoroughness evident in its consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which gave it power to persuade if lacking power to control."

In this case, the "determination" by an employee of H.U.D. that petitioners have standing (Pet. Br. at 21) is entitled to no weight at all. This gratuitous unarticulated conclusion, which is directly contrary to that of the District Court and the Ninth Circuit Court of Appeals, made only in a letter to petitioners' attorneys *while the case was pending in District Court* cannot even be deemed a semi-official declaration of the Department.

The desire of the Department of Justice for assistance, upon which its interpretation of the statutes appears primarily based, is understandable, but denial of standing to petitioners will in no way detract from the assistance legitimately available to it. Respondent asks only that any action filed against it be brought and prosecuted by a proper plaintiff with a cognizable grievance in a proceeding that will terminate on a final and conclusive note. Neither the need for assistance nor the size of the Department's Civil Rights staff can confer or create standing where none exists. The "private Attorney General" concept will not be undermined in the slightest degree by a denial of standing to these petitioners.

C. There Is No Need to Grant Third Parties Standing to Implement National Policy.

Citing *Barrows v. Jackson*, 346 U.S. 249, 259 (1953), petitioners and amici curiae contend that somehow tenants may be the only or most effective adversaries to challenge discriminatory practices of a landlord. This contention is somewhat of an indulgence in naiveté for it is well known that suits such as this are backed by persons or groups active in the movements they represent. If indeed any discriminatory housing practices have occurred on the scale asserted, or on any scale, it imposes no undue burden or hardship whatever to prosecute the action in the name or names of the victims of the discrimination. Unlike this case, the issues in such an action would be real, live and subject to rebuttal or settlement. The exact contrary is true when the action is brought by third persons who have not been the victims of an unlawful act. Thus, there is no way to resolve the dispute by providing housing to the person offended, the primary objective and purpose of the Fair Housing Act and § 1982. Instead, the action would inevitably devolve into one of "value preferences" (cf.

Sierra Club v. Morton at 1369) in which the plaintiff tenant would attempt to substitute his judgment for that of his landlord.

The ready availability of *proper* plaintiffs was demonstrated by occurrences related to this case. On February 25, 1971—fifteen days after the District Court dismissed this action—petitioners' counsel commenced an action entitled "Burbridge v. Parkmerced Corporation and Metropolitan Life Insurance Company." A copy of the complaint in that action is Appendix D hereto. The plaintiffs there, all Negroes, allege that they have been the direct victims of discriminatory housing practices which resulted in their exclusion from Parkmerced. The charging allegations are otherwise virtually the same as in this case. The very filing and pendency of that case dissolves and demonstrates the fallacy of the notion that somehow tenants may be the only or most appropriate persons to enforce fair housing laws.

Notwithstanding *Burbridge*, resident tenants are perhaps the least desirable persons to attempt implementation of the national policy of fair housing. They would lack the "personal stake in the outcome of the controversy" (*Baker v. Carr*, 369 U.S. 186, 204 (1962)) which would ensure that "the dispute * * * will be presented in an adversary context and in a form historically viewed as capable of judicial resolution" (*Flast v. Cohen*, supra). Each would be necessarily dedicated to his own personal social views rather than to a fair and orderly effectuation of the statutes involved. Further, the inherent transiency of residential tenancies robs tenants of the qualities requisite to standing. The facts of this case provide a compelling lesson in this regard. As heretofore noted (n. 2 p. 6), every individual plaintiff in intervention has moved from Parkmerced and one plaintiff is about to move. Even under their own theories of standing they now have neither a personal stake in the outcome of the controversy nor a cognizable—or

perhaps any—interest in the subject matter of the complaint.[21]

Finally, it is totally unnecessary to grant standing to petitioners to implement the enforcement features of the statutes. Private enforcement by proper plaintiffs is expressly authorized. Additionally, Congress has specifically authorized the Attorney General, and only the Attorney General, to maintain this type of "pattern or practice" case. § 3613 of the Fair Housing Act provides:

> "Whenever the Attorney General has reasonable cause to believe that any person or group or persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights granted by this title, or that any group of persons has been denied any of the rights granted by this title and such denial raises an issue of general public importance, he may bring a civil action in any appropriate United States district court by filing with it a complaint setting forth the facts and requesting such preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order against the person or persons responsible for such pattern or practice or denial of rights, as he deems necessary to insure the full enjoyment of the rights granted by this title."

This specific statutory grant of authority to the Attorney General evidences Congress' intent that this type action be brought only by the Attorney General. Had Congress intended otherwise it would have said so. Had it intended to authorize any volunteer to bring this type action § 3613 would have been unnecessary.[22]

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21. Cf. *Brown v. Ballas*, 331 F.Supp. 1033, which held that the injunctive aspects of a case brought under the Fair Housing Act became moot when the plaintiff was given the housing sought.

22. Respondent does not contend that the authority granted to the Attorney General diminishes the right of a person directly aggrieved to seek private enforcement of the Fair Housing Act to the extent contemplated by the statutes.

"It is the policy of the United States to provide for * * * fair housing" (42 U.S.C. § 3601). The national policy can be implemented and enforced fully and effectively by the extensive procedures and efficient machinery contained in the Fair Housing Act itself. In *Jones v. Mayer* this Court described the Act as (p. 417):

> "* * * a detailed housing law, applicable to a broad range of discriminatory practices and enforceable by a complete arsenal of federal authority."

The arsenal need not be augmented to include unnecessary, meaningless and inconclusive lawsuits by volunteers.

II

JURISDICTION

A. The Federal Court Does Not Have Subject Matter Jurisdiction Over the Claims Asserted Under the Fair Housing Act.

1. CLAIMS UNDER § 3610.

§ 3610 of the Fair Housing Act provides:

> "(d) If within thirty days after a complaint is filed with the Secretary or within thirty days after expiration of any period of reference under subsection (c) of this section, the Secretary has been unable to obtain voluntary compliance with this subchapter, the person aggrieved may, within thirty days thereafter, commence a civil action in any appropriate United States district court, against the respondent named in the complaint, to enforce the rights granted or protected by this subchapter, insofar as such rights relate to the subject of the complaint: *Provided, That no such civil action may be brought in any United States district court if the person aggrieved has a judicial remedy under a State or local fair housing law which provides rights and remedies for alleged discriminatory housing practices which are substantially equivalent to the rights and remedies provided in this subchapter.* * * *" (Emphasis added.)

Petitioners Trafficante and Carr elected to pursue the procedure of filing a complaint with the Secretary of H.U.D. as authorized by § 3610 (R. Ex. A at 5). The State of California has a comprehensive fair housing law generally known as the Rumford Act (Health and Safety Code, § 35700 et seq.) which provides rights and remedies for alleged discriminatory housing practices which are substantially equivalent to the rights and remedies provided by the Fair Housing Act.[23] The statement of policy in both Acts is substantially the same (Federal Act § 3601; State Act § 35700). Both make unlawful the same practices (Federal Act §§ 3604, 3605, 3606; State Act § 35720), and both allow an aggrieved party to file a complaint with an administrative agency (Federal Act § 3610(a); State Act § 35731). Both State and Federal agencies are required to conduct appropriate investigations (Federal Act § 3610; State Act § 35732). Both Acts provide for injunctive relief (Federal Act §§ 3610(d), 3612; State Act § 35734). An award of damages is authorized by both Acts under certain circumstances (Federal Act § 3612; State Act § 35738) and both have judicial remedies (Federal Act §§ 3610(d), 3612; State Act §§ 35734, 35738). In many respects the Rumford Act confers upon an aggrieved person remedies superior to those of the Fair Housing Act but in any event there is little, if anything, that could not be accomplished under the Rumford Act that could be achieved under the Fair Housing Act. The Rumford Act contains the judicial remedies contemplated by § 3610(d), such remedies being provided by

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23. Equivalence is recognized by the H.U.D. In a letter to Metropolitan the Department said (R. Ex. D at Ex. 1):

> "• • • we have found that the State law provides rights and remedies substantially equivalent to those provided by the Federal law."

California Health and Safety Code §§ 35730 and 35738; Government Code § 11523; and Labor Code § 1428.[24]

The Unruh Civil Rights Act (Civ. Code §§ 51, 52) provides further, although alternative,[25] remedies to a person aggrieved. Like the Fair Housing Act, *Unruh* prohibits discrimination in housing (Civ. Code § 51), provides a damage remedy (Civ. Code § 52) and authorizes injunctive relief (*Vargas v. Hampson*, 57 C.2d 479; 20 Cal. Rptr. 618; 370 P.2d 322).[26]

Congressional concern for deference to State or local remedies is pointedly expressed in the congressional history of the Fair Housing Act. In commenting on judicial enforcement procedures, Senator Miller stated:

> "It seems to me that if a State or local fair housing law provides substantially equivalent rights and remedies, if we are going to let the local agencies of government carry out their responsibilities, they should be given the opportunity to do so.
>
> • • • • •
>
> "That is why I provide in the second part of my amendment that no civil action may be brought in any U. S. district court if the person aggrieved has a judicial remedy under a State or local fair housing law which provides substantially equivalent rights and remedies to this act.
>
> "I believe it is a matter of letting the State and local courts have jurisdiction. We in the Senate know that our Federal district court calendars are crowded enough, without adding to that load if there is a good remedy under State law."

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24. To bar a Federal forum, § 3610(d) requires only that there be a judical remedy under a State or local fair housing law which provides rights and remedies which are substantially equivalent to the rights and remedies provided in the Fair Housing Act. It does not require that the judicial remedy itself be equivalent to the judicial remedy under the Federal statute.

25. Health and Safety Code § 35731.

26. The Unruh and Rumford Acts were the subjects of this Court's decision in *Reitman v. Mulkey*, 387 U.S. 369.

to which Senator Hart responded:

> "Mr. President, the Senator from Iowa in making the suggestion may very well have improved the Bill. It certainly recognizes the desire all of us share that the State remedies, where adequate, be availed of and that unnecessary burdening litigation not further clog the court calendars.
>
> "The Senator from Iowa in developing this approach has made the Bill much more acceptable. The senior Senator from Illinois [Mr. Dirksen] whose substitute we are actually discussing, shares this opinion."[27]

In *Colon v. Tompkins Square Neighbors, Inc.*, 289 F.Supp. 104 (S.D. N.Y.), the Court refused to assume jurisdiction of a cause based on alleged racial discrimination in housing because of the existence of a State statute providing rights and remedies substantially equivalent to the Federal Fair Housing Act. The Court noted Congressional intent, viz.: (pp. 109-110)

> "However, as this Court pointed out in its original decision, the Congress, in Section 810(d) of the 1968 Civil Rights Act, clearly expressed its intent that any person who claims to have been injured as a result of an alleged discriminatory housing practice must, as a prerequisite to the commencement of a suit in any United States district court, pursue his remedy in the state forum, assuming such a remedy is available and is substantially equivalent to the rights and remedies provided by Congress in the 1968 legislation."

The Federal and State Acts clearly provide substantially equivalent rights and remedies and, accordingly, the jurisdictional proviso of § 3610(d) is operative.

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27. 114 Cong. Rec. 4987.

2. CLAIMS UNDER § 3612.

Petitioners Trafficante and Carr have also proceeded under § 3612 of the Fair Housing Act. The latter Section does not contain the specific prohibition of Federal jurisdiction appearing in § 3610(d) but the legislative history of the Act makes it reasonably clear that Congress intended the jurisdictional proviso of § 3610(d) to be applicable to any suit brought under the Act. Nothing in the discussions or comments relating to jurisdiction indicate an intent to provide a broader base of federal jurisdiction under § 3612 than under § 3610. There is no apparent reason for allowing an action to be brought in a Federal Court under § 3612 if the same action under § 3610 is prohibited.[28]

In any event, the remedies provided in §§ 3610 and 3612 are alternative, not concurrent. On April 10, 1968 Representative Ford quoted from a study memorandum, viz.:

> "Section 812 states what is apparently an alternative to the conciliation-then-litigation approach above

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28. In commenting upon §§ 3610 and 3612, the author of 82 Harvard Law Review 834 observed (pp. 855-856):

> "It has been tentatively assumed throughout this Note that direct access is available under section 812 of title VIII. This assumption may not be easily accepted by courts. Section 812 may be thought to refer only to those actions properly before a federal court after the procedures outlined in section 810 have been followed. The argument is persuasive for the same reasons advanced to deny direct access under title VII. The agency procedures under title VIII are quite detailed. To permit bypassing threatens to render useless the elaborate steps taken to promote voluntary compliance and state and local participation in eliminating discrimination. In addition, the anomalies which apparently result from permitting direct access under title VIII are even less capable of rationalization than those which would result in the context of title VII. For example, section 810(d) explicitly requires federal courts to defer to appropriate state courts. If section 812, which contains no such requirement, is interpreted as an independent and direct route to the court, the concern for deferral is abandoned for no apparent reason."

stated: an aggrieved person within 180 days after the alleged discriminatory practice occurred, may, without complaining to HUD, file an action in the appropriate U. S. district court. * * * If the aggrieved party has first sought the assistance of the Secretary and then files an action within thirty days of his filing the complaint with the Secretary, *then the civil action arises under section 810(d)*, a section to which the expedition requirement of section 814 does not apply." (Emphasis added)[29]

Having availed themselves of the procedures set forth in § 3610, Trafficante and Carr should be held subject to the mandates of that Section.[30] It was noted in *Colon v. Tompkins Square Neighbors, Inc.*, supra that: (p. 107)

"* * * the Court never intended to provide alternative forums, the choice of which depended solely on the whim of the plaintiff with total disregard for the adequacy of state mechanisms."

The plaintiffs in intervention, who have proceeded directly under § 3612 without prior resort to the administrative procedures of § 3610, occupy no better jurisdictional position than petitioners Trafficante and Carr. Since California has fair housing laws which provide rights and remedies for discriminatory housing practices which are substantially equivalent to the rights and remedies of the Fair Housing Act, the plaintiffs in intervention should be relegated to their State law remedies by reason of § 3610(d)

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29. 114 Cong. Rec. 9612.

30. *Johnson v. Decker*, 333 F.Supp. 88 (D.C. Ca.) is distinguishable. There an action was filed under § 3612 by several plaintiffs after one had filed an administrative complaint under § 3610. Unlike this case, no attempt was made to assert claims under § 3610 and § 3612 at the same time in the same judicial proceeding.

of the Fair Housing Act.[21] There appears to be no reason or justification for permitting this action to be filed in a Federal Court in California. If such action is authorized without regard to the adequacy of State remedies the jurisdictional limitation of § 3610(d) will have been nullified.

B. Under the Circumstances of This Case the Federal Court Should Abstain from Exercising Jurisdiction of the Claims Under § 1982.

The Federal Court should not accept jurisdiction of the causes of action of the Complaint and Complaint in Intervention which are predicated upon an alleged violation of 42 U.S.C. § 1982. In *Hunter v. Erickson*, 393 U.S. 385 (1969), this Court admonished that the (p. 388):

> "• • • 1866 Civil Rights Act considered in Jones [v. Mayer, 392 U.S. 409] should be read together with the later statute *on the same subject* (citations) so as not to pre-empt the local legislation which the far more detailed Act of 1968 so explicitly preserves." (Emphasis added.)

The subject matter of the petitioners' § 3610, § 3612, and § 1982 claims are exactly the same and they should not be allowed to strip the Fair Housing Act's mandatory deference to State and local fair housing laws by simply resorting to § 1982. The combined rationale of *Jones, Hunter*, and *Colon* requires that, at the very least, Federal Courts should abstain from exercising jurisdiction under the circumstances of this case.

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31. In *Brown v. Lo Duca*, 307 F.Supp. 102, and *Johnson v. Decker*, 333 F.Supp. 88, direct access to the District Court under § 3612 was allowed. Those decisions, however, appear irreconcilable with the combined effect of *Jones v. Mayer, Hunter v. Erickson*, 393 U.S. 385, *Colon v. Tompkins Square Neighbors, Inc.*, the congressional history of the Fair Housing Act, and the specific mandate and spirit of § 3610(d).

III

THE CASE IS MOOT AS TO METROPOLITAN

As heretofore noted, on December 21, 1970, Metropolitan sold the buildings, structures and improvements constituting Parkmerced and leased the underlying land to Parkmerced Corporation for an initial term of thirty years. On that date, Metropolitan was divested of all right to manage, control or otherwise operate Parkmerced, including the rental of apartment units, and it no longer has any employees engaged in Parkmerced operations (R. Ex. K at 1, 2).

In *United States of America v. W. T. Grant Company*, 345 U.S. 629 (1953) this Court stated (p. 633):

> "Along with its power to hear the case, the court's power to grant injunctive relief survives discontinuance of the illegal conduct. (Citations.) The purpose of an injunction is to prevent future violations, (citation) and, of course, it can be utilized even without a showing of past wrongs. But the moving party must satisfy the court that relief is needed. *The necessary determination is that there exists some cognizable danger of recurrent violation, something more than the mere possibility which serves to keep the case alive.*" (Emphasis added.)

Similarly, in *United States v. Concentrated Phosphate Export Association, Inc.*, 393 U.S. 199 (1968), the Court observed (p. 203):

> "A case might become moot if subsequent events made it absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur. (393 U.S. 199, 203.)

See, also:

United States of America v. Alaska Steamship Company, 253 U.S. 113 (1920);

Textile Workers Union v. Lincoln Mills, 353 U.S. 448 (1957);

Alejandrino v. Quezon, 271 U.S. 528 (1926);

Golden v. Zwickler, 394 U.S. 103 (1969);

Alameda Conservation Association, et al. v. State of California, et al., 437 F.2d 1087 (Ca. 9) cert. den. 402 U.S. 928;

McKee & Co. v. First National Bank of San Diego, 397 F.2d 248 (Ca 9)

In *Powell v. McCormack*, 395 U.S. 486 (1969), this Court capsuled the mootness rule, viz.: (p. 496)

> "Simply stated, a case is moot when the issues presented are no longer 'live' or the parties lack a legally cognizable interest in the outcome."

This action is now moot as to Metropolitan. There exists no "cognizable danger of recurrent violation" (*United States of America v. W. T. Grant Company*, supra). The fact that the petitioners have claimed damages does not save the case from the mootness doctrine as it did in *Powell* and *Textile Workers Union*. Petitioners here are not entitled to damages in any event.

The prayer for injunctive relief against Metropolitan is now academic. While petitioners challenged Metropolitan's claim to mootness in the courts below they did concede that "a court would have difficulty in enforcing an affirmative action order against a seller who no longer controlled the rental offices or the business operations of the project • • •." Having no control whatever over the operation of Parkmerced, Metropolitan would be powerless at this time to comply with any injunctive order, either prohibitory or mandatory, that a Court might otherwise theoretically make.

CONCLUSION

For the foregoing reasons the Judgment of the Court of Appeals should be affirmed.

Dated: July 14, 1972.

Respectfully submitted,

RICHARD J. KILMARTIN
KNIGHT, BOLAND & RIORDAN
Attorneys for
Respondent
Metropolitan Life
Insurance Company

Appendix A

In the United States District Court for the Northern District of California

Case No. C-70 1754(RHS)

Paul J. Trafficante, et al.,
Plaintiffs,

and

Committee of Parkmerced Residents Committed to Open Occupancy, et al.,
Plaintiffs in Intervention,

v.

Metropolitan Life Insurance Company, et al.,
Defendants.

MEMORANDUM OPINION AND ORDER DISMISSING COMPLAINT AND COMPLAINT IN INTERVENTION

Plaintiffs, residents of the Parkmerced complex of apartments and town houses in San Francisco, brought this action under 42 U.S.C. § 1982 and the fair housing provisions of Title VIII of the Civil Rights Act of 1968, 42 U.S.C., Chapter 45, alleging that defendant Metropolitan, the then owner and operator of Parkmerced, was engaging in discriminatory housing practices in violation of the Act, making Parkmerced what plaintiffs have repeatedly referred to in this litigation as a "white ghetto" and depriving plaintiffs of their alleged right to live in a racially integrated community. A complaint in intervention was filed by community organizations and civic-minded individuals reiterating substantially the same claims. During the course of the litigation Metropolitan sold substantially all its interests in Parkmerced to Parkmerced Corporation, which now operates it and was joined as a defendant.

The threshold question, of course, is whether the plaintiffs have standing to maintain this action. They do not allege, nor can they, that they themselves have been denied any of the rights guaranteed by Title VIII or by 42 U.S.C. § 1982 to purchase or rent real property. Rather, they assert that the denial of such rights to others not parties to this action violates the policies of the Act and has resulted in denying them the benefits of living in the type of integrated community which Congress hoped to achieve by enacting Title VIII.

The Court, after full review of the voluminous memoranda submitted, has concluded that plaintiffs and plaintiffs in intervention have no such generalized standing as they assert to enforce the policies of the Act. More specifically, they are not "persons aggrieved" under § 810 of the Act, 42 U.S.C. § 3610(a), and therefore may not maintain this suit under § 812, 42 U.S.C. § 3612, or under 42 U.S.C. § 1982. The enforcement of the public interest in fair housing enunciated in Title VIII of the Act and the creation of integrated communities to the extent envisioned by Congress are entrusted to the Attorney General by § 814, 42 U.S.C. § 3613, and not to private litigants such as those before the Court.

In reaching this conclusion the Court is not unmindful of the "private attorneys general" cases heavily relied upon by plaintiffs, including, quite recently, *Data Processing Service v. Camp*, 397 U.S. 150 (1970). Each of such cases, however, was brought under the Administrative Procedure Act or otherwise involved action by a government agency and not the activities of private individuals such as are involved here. These cases are extensively reviewed and distinguished in *Sierra Club v. Hickel*, 433 F. 2d 24 (9th Cir. 1970).

The motions to dismiss are granted and the complaint and complaint in intervention herein are dismissed.

Dated: February 10, 1971

ROBERT H. SCHNACKE
Robert H. Schnacke
United States District Judge

Appendix B

United States Court of Appeals
for the Ninth Circuit

No. 71-1325

Filed Sep 13 1971
Wm. B. Luck, Clerk

Paul J. Trafficante, et al.,
Plaintiffs and Appellants,

vs.

Metropolitan Life Insurance Company, et al.,
Appellees.

Before: CHAMBERS and CARTER, Circuit Judges, and JAMESON, District Judge.

The petition for a rehearing is denied. The suggestion for a rehearing en banc is rejected.

All active circuit judges of the court have been advised of the suggestion for a rehearing en banc and none has requested it.

Appendix C

C 1. FAIR HOUSING ACT OF 1968
42 U.S.C. §§ 3601-3619

§ 3601. Declaration of policy

It is the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States.

Pub.L. 90-284, Title VIII, § 801, Apr. 11, 1968, 82 Stat. 81.

§ 3602. Definitions

As used in this subchapter—

(a) "Secretary" means the Secretary of Housing and Urban Development.

(b) "Dwelling" means any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof.

(c) "Family" includes a single individual.

(d) "Person" includes one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, receivers and fiduciaries.

(e) "To rent" includes to lease, to sublease, to let and otherwise to grant for a consideration the right to occupy premises not owned by the occupant.

(f) "Discriminatory housing practice" means an act that is unlawful under section 3604, 3605, or 3606 of this title.

(g) "State" means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, or any of the territories and possessions of the United States.

Pub.L. 90-284, Title VIII, § 802, Apr. 11, 1968, 82 Stat. 81.